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RECENT LEGAL LITERATURE

A MANUAL RELATING TO SPECIAL VERDICTS AND SPECIAL FINDINGS BY JURIES.

By George B. Clementson, of the Wisconsin Bar, St. Paul: West Publishing Co., 1905, pp. lxi, 350.

This book is a most excellent treatise upon a limited but important subject. The problem of successfully dealing with juries is a very difficult one. It has been the subject of much discussion by members of the bar. Many able lawyers and judges, after long experience with juries, have strongly advocated their total abolition in civil causes, on the ground, chiefly, that under modern methods of pleading the complicated questions of law covering the facts of an ordinary case at law cannot be effectively applied by the average jury. There is a widespread feeling that the general verdict, so far from being a guaranty of liberty, has outlived its usefulness, and has too frequently become a mere cloak, sacred only for its antiquity, to cover prejudice, ignorance or sympathy. "It comes into court unexplained and impenetrable." Trial by jury in its ordinary form is the slowest, most expensive and most cumbersome method conceivable for determining issues of fact, and one full of opportunities for the innocent commission of reversible error.

Special verdicts and special findings of fact are devices calculated to preserve the really valuable features of the jury system, while freeing it from the element of chance and accident which has brought it into disrepute. There would be no such general feeling of hostility to the jury if it were really subject, within proper limits, to the direction and guidance of the court, and if there were some practicable way of judicially ascertaining whether the jury had conscientiously found the facts and intelligently applied the law. Special verdicts and special findings of fact, as checks upon the jury and as means for aiding it in accomplishing its proper function of trying the facts, are worthy of a more careful and thorough trial than they have received. If they were better understood and more frequently made use of, they might prove sufficient to re-develop the jury into a serviceable judicial instrument.

The book under review gives a short but illuminating historical account of special verdicts, special findings, and the practice of questioning juries respecting the grounds for their verdicts. The mass of statutory matter on this subject has been admirably handled, and in no way interferes with a comprehensive discussion of general principles. The difference in theory, form and function between special verdicts and special findings are clearly presented and the practice in respect to each is fully explained. A reading of this book by any lawyer who is engaged in the trial of jury cases cannot fail to prove technically valuable and broadly suggestive. EDSON R. SUNDERLAND.

A TREATISE ON THE CONFLICT OF LAWS, or Private International Law. By Francis Wharton, LL.D. Third Edition by George H. Parmele, of the Editorial staff of the Lawyers' Co-operative Publishing Co., Rochester: Lawyers' Co-operative Publishing Co., 1905. Two volumes, pp. ccxxxiv, 1830.

This book has been before the legal profession for more than thirty years,

so that the merits or defects of Dr. Wharton's text have long since passed beyond the jurisdiction of the reviewer. The first edition was issued in 1872; the second was prepared by the author himself and issued in 1881; and no revision has been made since that time until the present edition by Mr. Parmele. In this age of countless cases, with its worship of precedent, twenty-four years is a long period for the accumulation of arrearages in the citation of cases. The assimilation of such a mass of material presents to the editor a laborious task, but at the same time it offers an opportunity for a most valuable amplification and development of the principles of the subject. This opportunity has been made good use of by Mr. Parmele. He has added to the text two hundred and seventy new sections, thus enlarging it by about one-third, and has added many new portions to old sections. The new parts of the text are well supported by notes, and the original text has been greatly strengthened by the citation of new cases! All additions, to both text and notes, are characterized by a wider spacing of lines, so that they may be easily identified. There is no question but that this new edition is immensely more valuable than the old, and that it makes Wharton on Conflict of Laws once more a comprehensive modern text-book.

EDSON R. SUNDERLAND.

BRIEF MAKING AND THE USE OF LAW BOOKS. By William M. Lile, Henry S. Redfield, Eugene Wambaugh, and James E. Wheeler. Edited by Nathan Abbott, Dean of the Leland Stanford, Jr., University School of Law. St. Paul: West Publishing Company, 1906, pp. viii, 472.

The purpose of this volume, as stated in the Introduction by Dean Lile, is to give "the student and young practitioner a working knowledge of the depositories of the law with practical suggestions as to the method of looking up authorities and properly presenting his case to the court." The frequent criticisms by the courts upon careless brief makers indicate very clearly that there has been a need for such a work and that older lawyers as well as students and young practitioners require suggestions as to proper methods of presenting cases to the courts. The volume well fulfills its purpose.

Professor Redfield discusses "The Brief on Appeal, its Nature, Contents and Preparation," and as an aid in the preparation of a brief appends to his essay a copy of one filed in the Supreme Court of the United States which is an excellent sample of what a brief of its kind should be, a clear, logical, and interesting argument, occupying about as much space as the rest of Professor Redfield's chapter. One is inclined to believe, however, that a shorter brief illustrating the arrangement of the several parts of a good brief, which are so clearly explained in this chapter, and containing "specifications of errors" properly grouped, would have proved more useful to the novice than the sample submitted.

This part is followed by a most instructive and valuable essay by Professor Wambaugh on "How to Use Decisions and Statutes," in which is especially emphasized the importance of extracting the doctrine of a decision.

"American Law Publications" are treated by Mr. Mason in Part III, in which are discussed the repositories of the law—the books of primary authority and those of secondary authority. In this part is to be found a list